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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

KLOOSTERBOER INTERNATIONAL
FORWARDING LLC and ALASKA
REEFER MANAGEMENT LLC,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,
U.S. DEPARTMENT OF HOMELAND
SECURITY, U.S. CUSTOMS AND
BORDER PROTECTION, and TROY A.
MILLER, U.S. Customs and Border
Protection Acting Commissioner, in his
official capacity,

Defendants.

Case No.: 3:21-cv-00198-SLG

DECLARATION OF JOHN CONNELLY

Pursuant to 28 U.S.C. § 1746, I, John Connelly, declare as follows:

1. I am the President of the National Fisheries Institute (“NFI”), a non-profit organization dedicated to advocating for the seafood industry and providing education about seafood safety, sustainability, and nutrition. I submit this declaration in further support of Plaintiffs’ Renewed Motion for Temporary Restraining Order and Preliminary Injunction. I have personal knowledge of the facts set forth herein.

2. NFI has more than 200 members, comprised of suppliers, retailers, restaurants, grocers, producers, importers, distributors, cold storage providers, harvesters, and processors. What makes NFI a unique trade association is that it not only represents the suppliers of material, but also those buyers who face the consumer, including further processors, brand owners and retailers of fish. NFI is uniquely qualified to represent the end-to-end impacts of this action by U.S. Customs and Border Protection (“CBP”) all the way through to the consumer. These diverse member companies bring delicious fish to American families. Collectively, our membership employs more than 200,000 workers throughout the U.S.

3. NFI and its members are committed to sustainable management of our oceans and being good stewards of our environment by endorsing the United Nations Principles for Responsible Fisheries. We believe that our investment in our oceans today will provide our children and future generations the health benefits of a plentiful supply of fish and seafood tomorrow. NFI promotes the U.S. Dietary Guidelines for Americans, which

recommend that consumers include fish and shellfish in their diets twice per week for longer, healthier lives.

4. NFI was alerted on or about August 20, 2021 that CBP began to issue notices of penalties to certain of our members for alleged violations of the Jones Act (“Penalty Notices”), in connection with the shipment of frozen seafood products from Dutch Harbor, Alaska to Calais, Maine via Bayside, New Brunswick, Canada, and coordinated and serviced by Alaska Reefer Management LLC (“ARM”) and Kloosterboer International Forwarding LLC (“KIF”) through third-party service partners (the “ARM/KIF Transportation System”).

5. NFI has also been informed that the Penalty Notices issued to our members and other companies in the chain of distribution are now in the range of hundreds of millions of dollars. These Penalty Notices have caused a major disruption to the supply chain for frozen seafood transported to the Eastern U.S., that has not only brought delivery of many of our members’ products to a stop, but if continued, threatens the industry, including other members’ further processing operations, their customers’ businesses (many of whom are also members of NFI), and the availability of Alaska Pollock, Pacific Cod, and other Alaska sourced seafood to American consumers.

6. U.S. retailers and restaurants rely on frozen fish for “just-in-time” delivery, which refers to the delivery of seafood products to customers for their immediate use, so that they do not need to store the seafood product for long periods of time. The entire industry depends on the availability of a reliable transportation process that timely provides

such deliveries. Most of America’s prominent Quick Service Restaurants (“QSRs”) and
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retailers rely on Alaska Pollock moving through these supply lines for the fish sandwiches and breaded products they provide to tens of millions of Americans.

7. In my prior Declaration, dated August 25, 2021, I expressed the concerns of my members that if the frozen fish products in Bayside were not released, they would run out of product to process, lay off workers, and jeopardize their ability to supply the market, particularly during the critical Lent observance period. Beginning each September, processors typically buy and process increased amounts of Alaska Pollock and Pacific cod to build tens of millions of pounds of inventories of finished fish products for the vitally important Lenten season, which represents about *25 percent of total annual seafood sales for some retailers and restaurants*. It takes processors up to 5 months to build the inventory of hundreds of millions of extra meals needed to supply retailers' Lenten sales. I outlined the harm as including the following consequences: foreign product substitution for U.S. fish, loss of processing jobs across the East Coast, but particularly in Massachusetts, New Hampshire, and Georgia, and downstream revenue losses during the Lenten season across national players in foodservice and retail. Failure to hold on to promotions and satisfy marketing commitments by our processors will mean the permanent reduction of retail space for selling fish products and financial penalties for stock outs.

8. Many of our members prefer not to speak out individually for fear of such consequences—meaning they fear that they may suffer long-term reduction in space on store shelves, and ultimately in revenues. They ask me to speak on their behalf to help underscore the very real and dire situation they are confronting.

9. Because of the lack of available raw material, our processor members have begun to reduce work hours, some by up to 60%. Reduction in work hours means American families go without paychecks. More than 100 workers are not working as a result of this raw material catastrophe. Work hours will be further reduced without a quick resolution to this problem. To be blunt: No raw material means no processing. No processing means no work hours. No work hours means no paychecks for American workers.

10. Another processor may be required to lay off workers if it is unable to build its inventory and deliver products to its customers. Without the Alaskan Pollock raw material, those workers cannot process and complete the finished fish products, which means the company cannot meet its commitments to the United States Department of Agriculture (“USDA”) for low income and school lunches. This company will suffer short- and long-term reputational harm with USDA if it cannot satisfy its commitments to feed needy children.

11. Another processor may be required to lay off workers under similar circumstances. Without the same U.S.-harvested raw material, this company’s workers cannot process and complete the finished fish products, which means the company cannot meet its commitments to the United States Department of Defense (“DOD”) for military commissaries, which must serve food that meets “Buy America” requirements. This company will suffer short- and long-term reputational harm with DOD if it cannot satisfy its commitments to feed service members.

12. Several members are working through the consequences of being unable to fill the pipeline of demand from foodservice and retailers for the Lenten season. At this stage, shortages to consumers are certain, as are rising prices to consumers to cover increased costs for moving around now scarce Alaskan seafood products.

13. NFI has also confirmed that the fear that there would be no alternative shipping solutions to move the full volume of products demanded by the U.S. has been realized. Logistics experts with whom we have worked indicate it will take *at least* 12 weeks to bring the 26 million pounds in question at Bayside back to East Coast processors through alternative routes, assuming such an alternative is identified. A solution to this problem is needed now in order for processors to build those essential hundreds of millions of meals of finished fish products needed for Lenten sales.

14. The U.S. seafood industry has suffered great damage since March 2020. Companies have incurred debilitating costs to protect their at-sea and shore-side workers from the pandemic while continuing the harvesting and processing operations necessary to feed American families. Supply disruptions such as this 52-day (and counting) shutdown of the ARM/KIF Transportation System have further harmed an industry that is only now recovering from the events of the last 17 months.

15. Moreover, the U.S. foodservice industry suffered catastrophic losses as a result of the Pandemic. Restaurants of all sizes and all over the U.S. are beginning to open up, and foodservice distributors are beginning to fill the supply lines to service a return to the U.S. culture of enjoying seafood while out to dinner. Supply shortages and disruptions could not come at a worse time.

16. If the ARM/KIF Transportation System is not restarted, it is my belief that the Alaska seafood industry, other U.S. businesses further down the chain who are dependent on the Alaska seafood industry, and the American consumer will suffer extreme harm.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Dated: McLean, Virginia
October 8, 2021

A handwritten signature in black ink, appearing to read "John Connelly", with a stylized flourish at the end.

John Connelly